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SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 19

No. 622

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

SUBJECT INDEX

	Page
Jurisdiction	1
Questions Presented	1
Constitutional Provision Involved	2
Statutes Involved	2
Statement of the Case	2-3
Reasons for Denying Writ	3-8
Relief Sought	9

INDEX TO AUTHORITIES CITED

Cases

	Page
Building Service Employees International Union, Local 262 v. Gazzam, 339 U.S. 532 (70 S. Ct. 784, 94 L. ed. 1045)	7
Haenlein v. Saginaw Trades Council, 361 Mich. 263	3
Teamsters and Truck Drivers Local No. 164, A.F. of L., et al., v. Way Baking Co., 345 U.S. 957, 73 Sup. Ct. 939, 97 L. ed. 1378	4
Way Baking Co. v. Teamsters and T. D. Local, 335 Mich. 478, 56 N.W. (2d) 357	4, 5, 6, 7, 8

Statutes

Act No. 176 of the Public Acts of 1939, as amended, being M. S. A. 17.454(1)-17.454(27)	5-6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. .....

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION No. 486, AND NEIL DALTON, JR.,
Petitioners,

vs.

ANDREW J. HAENLEIN,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

JURISDICTION

Jurisdiction of this Court cannot be invoked under 28 U. S. C. par. 1257(3) because the case does not involve the Constitution or statutes of the United States. The case does not involve a federal question.

QUESTIONS PRESENTED

Respondent is not satisfied with Petitioners' "Questions Presented" and therefore submits the following:

Does Petitioners' application present a federal question where Petitioners made no proof in the state court that the business of Respondent, employer, affected interstate

commerce (and such was not apparent on the face of t pleadings) and the uncontradicted proof in the state co disclosed Petitioners acted in violation of state statu (not in conflict with federal statutes) declaring the pub policy of the state in labor disputes, and Petitioners act in violation of the penal statutes of the state regulati labor disputes?

CONSTITUTIONAL PROVISION INVOLVED:

Respondent submits no federal constitutional provis is involved in the case at bar.

STATUTES INVOLVED

Respondent submits no federal statute is involved the case at bar.

STATEMENT OF THE CASE

Respondent does not accept Petitioners' "Statement the Case" because of inaccuracies and omissions and s mits the following:

Respondent is a builder of private residential dwelli in Saginaw County, Michigan. He filed a Bill of Compl in chancery in the Circuit Court for the County of S naw, Michigan, charging ten unions and twelve indivi Petitioners included, with illegal and violent acts in p suance of an unlawful labor objective, namely, to fo Respondent to compel his employees to join a union "violation of the laws of the State of Michigan". P tioners, Teamsters Union Local No. 486 and Neil Dal Jr., its business agent, were charged with specific dividual acts of illegal picketing, obstructing lawful t fic upon the public highways of the state, preventing gress and egress on Respondent's construction proj engaging in illegal primary and secondary boycotts, other violent and unlawful acts. Petitioners, with the o defendants, were charged with an unlawful conspirac violate the state law. Respondent sought injunctive re temporary and permanent, and money damages. P tioners filed a general appearance. Petitioners did

move in the trial court to dismiss the suit for lack of state court jurisdiction. Petitioners filed a general answer, neither admitting nor denying the specific individual illegal acts charged against them and asserted a lack of information upon which to base an answer. Petitioners made a naked allegation of lack of jurisdiction of the state court to entertain the suit by reason of interstate commerce and restriction of free speech, averring no fact in support thereof by affidavit or otherwise. Petitioners ignored the trial court's order so to do by amendment. Neither did Petitioners avail themselves of the processes of discovery, deposition or pre-trial to establish facts in support of alleged federal jurisdiction. They offered no proof on the allegation of jurisdiction. Petitioners had notice of trial. Petitioners ignored the trial. Petitioners' own correspondence established they had notice of the trial and that they had "* * * no interest in the Haenlein Company and do not desire to litigate the issues involved in that case." (361 Mich. 263, at pp. 265, 278-279).

Upon the trial all remaining defendants appeared personally and by counsel and admitted in open court that the material allegations in Respondent's Bill of Complaint were true. (See Decree, 92a, on appeal to Michigan Supreme Court). The trial court found Petitioners engaged in an illegal primary and secondary boycott and guilty of the conspiracy to violate the state laws governing labor disputes.

REASONS FOR DENYING WRIT

The case here presented is not one of peaceful picketing, the Teamsters' statement to the contrary notwithstanding. The Teamsters were charged with unlawful trespass on Respondents' property, threats to his employees while in the course of repeated illegal trespasses, mass picketing, obstruction of public roads, blocking free ingress and egress on Respondent's property, threats of violence to Respondent and his employees, smearing of beautiful new brick residential buildings with contrasting paint, pilfering and destruction of Respondent's property, picketing of Respondent's home, picketing of Respondent's material suppliers, disturbing the peace, requiring the intervention of local law enforcing officers, all as part and

parcel of an illegal conspiracy in pursuance of an unlawful labor objective in violation of the laws of the State of Michigan enacted for the preservation of the peace and as the declared public policy of the state in labor disputes.

The unlawful conspiracy charged and the acts admittedly committed in pursuance thereof were in violation of the state statutes and the public policy therein set forth. There is no claim on the part of Petitioners, nor could there be, that there is any conflict between the state law and the federal law on that subject.

The case at bar is on all fours with *Way Baking Co. vs. Teamsters and T. D. Local*, 335 Mich. 478, 56 N.W. (2d) 357. In that case the same attorneys, using the same arguments, petitioned this court for a Writ of Certiorari, which was denied: See *Teamsters and Truck Drivers Local No. 164, A. F. of L., et al., Petitioners, vs. Way Baking Co., a Michigan Corporation*, 345 U. S. 957; 73 Sup. Ct. 939, 97 L. Ed. 1378.

Respondent in the Way Baking Company case had for many years conducted a wholesale baking business in the City of Jackson, Michigan. Sales and deliveries were made by its employees referred to as "Driver-Salesman". Respondent's plant was without railroad facilities, and the materials used by it were delivered by truck. Its employees were not members of any union. Respondent undertook to enlarge its facilities and entered into contracts to that end. Practically all of the employees participating in the building enterprise were members of labor unions. Many of the truck drivers hauling material for use in the operation were members of Petitioner union. Petitioners proceeded to picket Respondent's plant and also a number of grocery stores and restaurants in Jackson handling Respondent's products. Signs were displayed by those engaged in picketing, advertising the fact that employees of Respondent were not members of Petitioners' union.

The bill of complaint filed by the Way Baking Company in the state court alleged that Petitioners were unlawfully interfering with the conduct of its business to its serious injury and that the conduct of the Petitioners had for its purpose coercing the Respondent to require its employees to join the union and to coerce said employees to do so for the protection of their personal interests, and that Peti-

tioners' conduct in picketing stores handling Respondents' products amounted to a secondary boycott directed toward the accomplishment of the unlawful labor objective alleged by Respondent.

Petitioners denied any unlawful labor objective, asserting that the picketing operations were in the exercise of the right of free speech, and that Respondent's business affected interstate commerce, and that labor disputes arising therefrom were governed by the National Labor Relations Act, as amended by the Taft-Hartley Act of 1947, and that the state court was without jurisdiction in the premises by reason thereof.

The state trial court concluded that the purpose of Petitioners' conduct was not a lawful labor objective, in that Petitioners sought by coercion and intimidation to induce Respondent's drivers to join the union and that the controversy was one over which the state court had jurisdiction and further that the constitutional right of free speech did not permit the employment of coercive tactics in an attempt to accomplish the unlawful labor objective. A motion by the defendants subsequent to the entry of the decree to grant a rehearing for the purpose of permitting Petitioners to supplement the record on the question of interstate commerce was denied.

The state supreme court, in an opinion supporting the trial court, held that the testimony clearly supported the claim of Respondent (admitted in the case at bar) that Petitioners' activity was to injure the business of Respondent and to bring about such a loss of commissions of Respondent's drivers as to compel Respondent to insist that its employees join a union and likewise to force said employees to do so for their own protection. The state court cited the state statute that such a purpose is not a lawful labor objective. Act No. 176 of the *Public Acts* of 1939, as amended, being *M. S. A.* 17.454(1)-17.454(27), reads in part as follows:

> "Section 1. It is hereby declared as the public policy of this state * * *."
>
> (*M. S. A.* 17.454 (1)).

"Section 16. It shall be unlawful for an employer or any officer or agent of an employer (1) to interfere with, restrain, or coerce employees in the exercise of their right to self-organization, * * *."

(*M. S. A.* 17.454 (17)).

"Section 17. It shall be unlawful (1) for any employee or other person by force or unlawful threats to force, or attempt to force any person to become or remain a member of a labor organization or (2) for an employee or other person by force or unlawful threats to force or attempt to force any person to refrain from engaging in employment. Violation of this section shall be a misdemeanor and punishable as such."

(*M. S. A.* 17.454 (13)).

The state court compared the state statute to the federal statute set forth in the opinion in the Way Baking Company case on page 486, and concluded:

"'The quoted provisions of the State statute, as well as of the Federal law, are clear. Obviously they are directed at practices of the character involved in the instant case. *No claim is made that there is any conflict between the State statute and the act of congress.*'" (Emphasis ours).

The court distinguished between cases cited by Petitioners for a contrary holding. At page 495, the court stated:

"Defendants' claim that the trial court had no jurisdiction to determine the cause of action and to grant relief to the plaintiff appears to rest principally on the argument that the national labor relations act, as amended by the Taft-Hartley act, has invested the national labor relations board with sole and exclusive jurisdiction of all controversies of the character involved in the case at bar. * * *"

(At page 496) "Construing the provisions of the labor management relations act of 1947 in the light of the indicated purpose sought to be accomplished

thereby, it cannot be said that the congress evidenced an intention to deprive state courts of all jurisdiction in cases involving a factual situation of the character presented in the instant controversy. Had such a result been intended, we think that it would have been declared in clear and positive language. State Legislatures had, prior to 1947, adopted laws designed to obviate industrial strife and to protect and safeguard the rights of employers and employees as well as the rights of the public. State courts had repeatedly determined controversies of the nature involved in the decisions of this Court above cited. That the congress was aware of such situation is not open to question. * * *"

"We are not in accord with appellant's claim that the national labor relations act, as amended by the labor management relations act of 1947, must be construed as vesting sole and exclusive jurisdiction in the national labor relations board, and, hence, as precluding the State court from exercising jurisdiction, under the factual situation presented by the record. Rights of the character asserted here by plaintiff are recognized and protected by the State statute, above quoted, the purpose of which is in keeping with that of the Federal law. Said statute is penal in form, and must be regarded as a clear and unequivocal declaration of public policy. The trial court was correct in holding that it was clothed with authority to grant the injunction relief sought and that the facts established by the pleading and proofs required such action."

(At page 497) "The contention advanced by appellants that the injunction issued by the trial court operates as an unwarranted interference with their right of freedom of speech under the First and Fourteenth Amendments to the Federal Constitution is fully answered by the cases above cited, particularly the decision of the United States Supreme Court in *Building Service Employees International Union, Local 262 v. Gazzam:*"

339 U. S. 532 (70 S. Ct. 784, 94 L. ed. 1045).

The case at bar is not one of peaceful picketing as claimed by the Petitioners. The Respondent's Bill of Complaint alleged acts of violence with particular, specific individual acts committed by the Petitioners. Petitioners' general answer denied knowledge of their own individual acts. Petitioners chose to ignore their trial notice of this case in the state court and elected not to appear on the trial of said cause to offer any proof in support of their naked allegation that Respondent's business affected interstate commerce. The trial court decided the case on the proofs submitted at the trial. There is no proof in this case to support the Petitioners' mere assumption that Respondent's business affected interstate commerce. His business does not affect interstate commerce. The injunction does not enjoin peaceful picketing. Respondent's material allegations of acts of violence and coercive tactics to compel forcible unionization in violation of the state's labor laws declaring public policy in labor disputes was admitted by all Defendants on the trial, including the Petitioners by their failure to attend the trial. Admissions of co-conspirators are binding on all. The unlawful conspiracy was admitted on the trial.

The *Way Baking Company case*, supra, controls the case at bar. Application for Writ of certiorari was denied in that case.

RELIEF

Petitioners' application for writ of certiorari should be denied.

Respectfully submitted.

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Dated: January 16, 1961
Saginaw, Michigan.